

**BOROUGH OF LEONIA**

**ORDINANCE NO. 2019-1**

**AN ORDINANCE GRANTING MUNICIPAL CONSENT  
FOR THE PLACEMENT OF FACILITIES AND THE  
ESTABLISHMENT OF CABLE TELEVISION SERVICE IN  
THE BOROUGH OF LEONIA, COUNTY OF BERGEN,  
STATE OF NEW JERSEY**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Leonia, Bergen County, New Jersey that:

Section 1. Purpose of the Ordinance

The Municipality hereby grants to Time Warner Cable New York City LLC, l/k/a Charter Communications, its consent to place in, upon, along, across, above, over and under highways, streets, alleys, sidewalks, public ways and public places in the Municipality, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Municipality of a cable television system. All of the commitments and statements contained in the Application for Renewal of Municipal Consent filed on September 1, 2009, by Time Warner Entertainment Company, L.P., the Company's predecessor franchisee ("Application"), and any amendment thereto submitted in writing to the Municipality by the Company, except as modified herein, shall be binding upon the Company as conditions of this Consent, provided they do not conflict with State or federal law, and subject to change in the ordinary course of business during the term of this Consent. The Application, the contents of which may be modified by Company from time to time in the ordinary course of business, shall be annexed hereto and made a part hereof by reference.

Section 2. Definitions

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission (47 C.F.R. Part 75.5) and the Cable Television Act (N.J.S.A. 48:5A-1 et seq.) and shall in no way be construed to broaden, alter or conflict with the federal or State definitions:

- (a) "Municipality" is the Borough of Leonia, County of Bergen, in the State of New Jersey.
- (b) "Company" is the grantee of rights under this ordinance and is locally known as Charter Communications.
- (c) "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, 1972, Section 48:5A-1 et seq. as amended.
- (d) "BPU" or "Board" is the New Jersey Board of Public Utilities.

Section 3. Statement of Findings

A public hearing concerning the franchise herein granted to the Company was held after proper public notice pursuant to the terms and conditions of the Act, and pursuant to communications with the Board of Public Utilities, on a date meeting the approval of representatives of the Company. The hearing having been held as above stated and having been fully open to the public, and the Municipality having received at the hearing all comments regarding the qualifications of the Company to receive this franchise, the Municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications, and that the Company's operating and construction arrangements are adequate and feasible.

Section 4. Duration of Franchise

The consent herein granted shall expire ten (10) years from the date of issuance by the BPU of a new Certificate of Approval based upon this Ordinance.

Section 5. Franchise Expiration and Renewal

If the Company seeks a successive consent, it shall, prior to the expiration of this consent, apply for a municipal consent and Certificate of Approval in accordance with the Cable Television Act, N.J.S.A. 48:5A-11 and 16, and applicable State and federal rules and regulations, and this consent shall continue in effect during the period following expiration of the consent granted herein and until such time that a decision is made relative to the renewal of this municipal consent.

Section 6. Franchise Fee

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality a sum equal to three and one half percent (3½ %) of the gross revenues, as defined in section 3 of P.L.1972, c.186 (C.48:5A-3), that the Company derives during the calendar year from cable television service charges or fees paid by subscribers in the municipality to the Company, or any amount required by the Act or otherwise allowed by law.

Section 7. Service Upgrades

The Company shall provide upgrades in services to the residents of the Municipality that are consistent with those upgrades it provides on a permanent basis to its other subscribers in other similarly situated municipalities within its Bergen System.

Section 8. Municipal Connections

The Company will provide one free hook-up with basic cable service to the following municipal owned facilities: Leonia Municipal Court, 305 Beechwood Place, first floor, Leonia, NJ 07605; Leonia Middle School, 500 Broad Avenue, Leonia NJ 07605; Leonia High School,

100 Christie Heights, Leonia, NJ 07605; Anna C. Scott School, 100 Highland Street, Leonia, NJ 07605; Basement of Borough Hall Annex, 305 Beechwood Place, Leonia, NJ 07605; and Leonia Recreation Center, 370 Broad Avenue, Leonia, NJ 07605.

Section 9. Franchise Territory

The consent granted herein to the Company shall apply to the entirety of the Municipality of the Borough of Leonia, and any property hereafter annexed by the Municipality by law.

Section 10. Construction Timetable

The Company shall be required to complete any proposed construction within the service area described in the Application.

Section 11. Extension of Service

The Company shall be required to proffer service along any public right-of-way to any person's residence or business located in those areas of the franchise territory described herein, in accordance with the proposal for the provision of services as described in the Application. Any additional extension of the system shall be made in accordance with the Company's line extension policy.

Section 12. Construction Requirements

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surfaces in the natural topography, the Company shall at its sole expense restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent the Municipality shall, for itself and not for, on behalf of or at the request of any third party, alter or change the grade of any street, alley or other public way or place, the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company,

provided, however, that all other users of the rights-of-way in the Municipality are likewise required to bear such costs under such circumstances.

Temporary Removal of Cables: The Company shall temporarily move or remove appropriate parts of its facilities to allow the moving of buildings or machinery or in other similar circumstances. The expense thereof shall be borne by the party requesting such action except when requested by the municipality for itself and not for, on behalf of or at the request of any third party. In such event, that is, where the request is made by the Municipality for itself and not for, on behalf of or at the request of any third party, the Company shall bear the cost, provided, however, that all other users of the rights-of-way in the Municipality are likewise required to bear such costs under such circumstances.

Removal or Trimming Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the Municipality so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance for the Company's facilities.

#### Section 13. Local Office

During the term of this franchise and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment, malfunctions, and similar matters. The present address of the Company for such purpose is 200 Roosevelt Avenue, Palisades Park, New Jersey. Such local business office shall be open during normal business hours, but in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, except holidays.

#### Section 14. Municipal Complaint Officer

The Borough Administrator is hereby empowered to receive any complaints and to process such complaints to the New Jersey Office of Cable Television & Telecommunications, within the BPU, which is hereby designated as the Complaint Officer for the Municipality, pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5.

Section 15. Performance Bond

During the life of the franchise, the Company shall post a performance bond to the Municipality in the sum of twenty-five thousand dollars (\$25,000.00). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its Application.

Section 16. Liability Insurance

The Company agrees to maintain and keep in full force and effect at its sole expense at all times during the term of this consent, sufficient liability insurance naming the Borough of Leonia as an additional insured and insuring against loss by any claim, suit, judgment, execution or demand in the minimum amounts of (1) \$1,000,000.00 for bodily injury or death to any one person; (2) \$100,000.00 for property damage resulting from any one accident, and (3) \$50,000.00 for all other types of liability; or for any other amounts statutorily mandated.

Section 17. Municipal Liability

The Company shall hold the Municipality harmless for any liability arising out of the Company's operation and construction of its cable television system.

Section 18. Review of Performance

- (a) Upon request of the Municipality, the Company shall appear before the Mayor and Council, no more frequently than annually, unless by mutual

consent, to review the Company's performance hereunder, and to discuss any related issues.

- (b) The Municipality reserves the right, at any time during the duration of this Municipal Consent, to notify the Company of a material breach of the Company's obligations hereunder. Such notice shall provide the Company with a description in detail of each such alleged breach, and shall provide a reasonable time, but no less than thirty (30) days, in which to cure the alleged breach. If the Company fails to cure the alleged breach within such reasonable time as given, the Municipality shall have the right to refer the matter immediately to the Board for its administrative review and enforcement.

Section 19. Force Majeure

The Company shall not be liable or responsible for, in whole or in part, any delay or failure to perform any of its obligations hereunder which may result from accidents, floods, fires, earthquakes, tornadoes or other acts of God; war, acts of war (whether or not a declaration or war is made), civil disobedience; civil disturbance, sabotage or vandalism, customer tampering or interference, or act of public enemy; strikes, other labor or job actions or unavailability of materials or equipment; or other events or circumstances beyond the reasonable control of the Company.

Section 20. New Regulatory Regime Provision

- (a) The Company and the Borough acknowledge that there is a law currently in effect in New Jersey authorizing cable television companies to elect to seek State-issued franchises. The Company has chosen not to do so at this time but rather to seek a municipal ordinance that will be approved by the

issuance of a Certificate of Approval by the Board. However, the Company's decision at this time not to do so shall not be deemed or construed as a waiver of the Company's right to do so in the future, should it so choose.

- (b) Should there be any change in local, state or federal law during the term of the franchise granted herein which reduces the regulatory or economic burdens for persons desiring to construct, operate or maintain a cable television system in the Borough, the Municipality, at Company's request, shall agree with the Company to amend this Ordinance to similarly reduce the regulatory or economic burdens on the Company. All such amendments must have Board approval to the extent required by applicable law. It is the intent of this section, that, at the Company's election, the Company shall be subject to no more burdensome regulation or provided no lesser benefits under this Ordinance than any other persons that might provide cable television service in the Borough.

Section 21. Separability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 22. Consistency With Future Federal and State Rules, Regulations and Orders

This consent shall be subject to applicable State and federal law.

Section 23. Effective Date of the Ordinance



This municipal consent shall become effective as of the date upon which the Municipality receives written notification that the Company accepts the terms and conditions hereof, and approval of the Board of Public Utilities.

  
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JUDAH ZEIGLER, MAYOR

ATTESTED:

  
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BARBARA RAE, RMC, CMC  
Borough Clerk

INTRODUCTION DATE: January 23, 2019

ADOPTION DATE: February 4, 2019

APPROVAL DATE: February 4, 2019